United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

NO. 74-1940

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P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

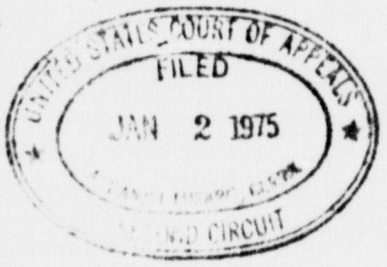
v.

ROCHESTER MUSICIANS ASSOCIATION LOCAL 66, AFFILIATED WITH THE AMERICAN FEDERATION OF MUSICIANS,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

BRIEF FOR RESPONDENT



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STATEMENT OF THE ISSUES PRESENTED

1. Whether the Board improperly found that the Union violated Section 8(b)(1)(B) of the National Labor Relations Act, since there was no evidence to establish that the supervisor in question was a representative of the employer "for the purposes of collective bargaining or the adjustment of grievances" within the meaning of that provision.

2. Whether the Board should have dismissed the complaint against the Union on the ground that a charge involving the same circumstances had previously been dismissed because the Employer was outside the Board's then-current jurisdictional standards.

3. Whether the Board's order improperly required the Union to publish a notice in the monthly journal of its parent organization.

STATEMENT OF THE CASE

This statement is intended to supplement the Board's statement, in order to set forth more fully certain matters which are pertinent to the issues presented for consideration.

On February 24, 1972, respondent Union addressed a letter to Dr. Jones, the charging party in this case, setting forth five numbered allegations which had been lodged with the Union's Board of Directors, each claiming that Jones, a member of the Union, had engaged in activities which violated the Union's constitution, by-laws, and rules (A. 32-34). Those charges, in summary, were (1) that in September 1969 Jones had crossed a Union picket line and announced his readiness to conduct a rehearsal of the Orchestra, contrary to the Union's strike resolution; (2) that in January 1972 Jones had recommended to the Employer that the employment contracts of four Orchestra members not be renewed and that a fifth member be placed on probation, without first submitting these recommendations for review by a Union committee as required by the Union's by-laws; (3) that Jones had cooperated with the Employer in a plan to discharge the Orchestra members referred to in Charge No. 2 because of their Union activities; (4) that in January 1972 Jones had attempted to prevent the president of the Union from speaking to members of the Orchestra; and (5) that Jones had brought

public disgrace on five Orchestra members by making public statements that they were musically incompetent. The letter notified Jones that a hearing would be held on these charges on March 6, 1972, and informed him of his rights to present evidence and to be represented by counsel. (A. 32-34.)

Jones appeared before the Union's Executive Board on March 6, 1972, and requested a postponement of the hearing, which request was granted. After obtaining the postponement, Jones, on March 20, 1972, filed with the NLRB a charge alleging that the Union's bringing of intra-union charges against him violated Section 8(b)(1)(B) of the Act. (A. 6-7.) The intra-union charges were then held in abeyance pending the outcome of Jones' unfair labor practice charge.

On March 23, 1972, Jones and the Union were advised by the NLRB Regional Director that the charge would be dismissed since "the effect on interstate commerce of the activities of the Employer is too remote to warrant assertion of the Board's jurisdiction" (A. 7). Jones' appeal of the Regional Director's action was denied by the General Counsel on August 9, 1972 on the authority of an advisory opinion issued by the Board on July 31, 1972 in response to a petition filed by the Employer on May 1, 1972. In its advisory opinion the Board, noting that there was then pending in the General Counsel's office a petition for review of the Regional Director's refusal to issue a complaint, concluded that it would not assert jurisdiction over the Employer on the basis of its then-current jurisdictional standards (Rochester Civic Music Assn., Inc., 198 N.L.R.B. No. 75, 80 LRRM 1752).

On August 21, 1972, the Union's Executive Board, acting in reliance on the ruling by the Board (A. 7, 49), proceeded with its trial of the charges against Jones. 1/ He was found guilty of each of the five charges which had been filed against him, and a fine of $1,000 and six months' suspension from union membership were imposed (A. 7, 35-40). Thereafter, on October 16, 1972, the Union's Executive Board reviewed the proceedings against Jones and affirmed its prior findings as to each of the five charges. However, the Executive Board, on its own motion, also rescinded the six months' suspension and reduced the fine to $50 on each charge, for a total of $250. Jones was informed of such action in a letter dated October 27, 1972, which further advised him that upon his failure to pay the fine within ten days he would be subject to suspension of his Union membership (A. 8, 35-40). The fine was subsequently paid.

In the meantime, the NLRB, on August 19, 1972, published in the Federal Register a notice of proposed rule making concerning standards for the exercise of jurisdiction over symphony orchestras, stating that any rule that might be adopted would be applied to proceedings pending at the time of the rule's adoption, as well as to proceedings arising thereafter (37 Fed. Reg. 16813). Jones thereupon filed (on August 28, 1972) a new Section 8(b)(1)(B) charge against the Union (A. 29-30), and this charge was held by the Regional Director for over eight months. Following the Board's

1/ Although Jones was tried in absentia the Administrative Law Judge noted that "no question is presented as to the regularity and fairness of the procedure before the Union's Executive Board" (A. 7).

adoption on March 2, 1973 of a rule assuming jurisdiction over symphony orchestras meeting certain monetary standards, the Regional Director, on May 17, 1973, issued the complaint which commenced the present proceeding (A. 8).

The complaint alleged, inter alia, that Dr. Jones was employed as a supervisor "with the authority to adjust grievances of employees" (par. V); that on January 27, 1972 he had recommended that four musicians' contracts not be renewed and that a fifth be placed on probation (par. IX); that because of such recommendations the Union brought Jones up on charges on February 24, 1972, fined and suspended him on August 21, 1972, and rescinded the suspension and reduced the fine on October 16, 1972 (par. X, XI, XII); and that such acts on the part of the Union constituted restraint and coercion of the employer within the meaning of Section 8(b)(1)(B) (par. XIII).

No testimony was offered at the hearing held on this complaint (A. 41-61), but the parties introduced certain exhibits and stipulated certain facts. However, while counsel for the Union agreed that Jones was a "supervisor" within the meaning of the Act, he refused to stipulate that Jones had authority to adjust grievances as alleged in the complaint and expressly disclaimed that such authority existed (A. 52, 56). The Administrative Law Judge indicated that evidence on this issue would be immaterial under her view of prior Board decisions (A. 56-57), and no offer of proof was made by counsel for the General Counsel.

ARGUMENT

I.

SINCE NO EVIDENCE WAS OFFERED TO SHOW THAT JONES HAD AUTHORITY TO ADJUST GRIEVANCES OF EMPLOYEES WITHIN THE MEANING OF SECTION 8(b)(1)(B), NO VIOLATION OF THAT PROVISION WAS ESTABLISHED

The substantive issue in this case is whether the Union violated Section 8(b)(1)(B) of the Act, which makes it an unfair labor practice for a union to restrain or coerce "an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances . . . ." While the complaint alleged that Jones had "the authority to adjust grievances of employees" within the meaning of this provision, there is nothing in the record to establish that he had or exercised such authority, nor was any effort made by the General Counsel to offer proof on this issue.

In her opinion below (which was subsequently adopted by the Board), the Administrative Law Judge commented on this state of the record as follows (A. 15):

> "After Respondent admitted that Jones was a 'supervisor' within the meaning of Section 2(11) of the Act, I stated that I would exclude any evidence the parties might offer as to whether he had or exercised the authority to adjust grievances since the Board has held unequivocally that '[a]ll persons who are "supervisors" within the meaning of Section 2(11) of the Act are employers' "representatives for the purposes of collective bargaining or the adjustment of grievances" within the purview of Section 8(b)(1)(B) of the Act.'"

It appears that the Administrative Law Judge may well have misconceived the then-prevailing position of the Board on this issue, for as the Supreme Court has since pointed out, the Board's decisions "proscribe[d] union

discipline of management representatives both for the manner in which they performed their collective bargaining and grievance adjusting functions, and for the manner in which they performed other supervisory functions if those representatives also in fact possessed authority to bargain collectively or to adjust grievances. Florida Power & Light Co. v. International Bro. of Elec. Wkrs., 94 S. Ct. 2737, 2742-43 (1974)(emphasis added); see also Newspaper Guild, Erie News. Guild Local 187 v. N. L. R. B., 489 F. 2d 416, 419-20 (3d Cir. 1973). In any event, the governing rule is no longer in doubt, for the Supreme Court's Florida Power & Light decision, handed down after both the Administrative Law Judge and the Board had disposed of the instant case, makes clear that Section 8(b)(1)(B) can be violated only when union action is directed at a supervisor who performs the duties of "grievance adjuster or collective bargainer on behalf of the employer" (94 S. Ct. at 2744-45).

In Florida Power & Light the Supreme Court pointed out that the "basic import" of Section 8(b)(1)(B), as explained in the pertinent Senate report, was to prevent a union from coercing an employer into joining or resigning from an employer association which negotiates labor contracts, and to prohibit unions from dictating who shall or shall not represent an employer in the settlement of grievances (94 S. Ct. at 2741-42). The Court noted that for more than 20 years after the enactment of Section 8(b)(1)(B) in 1947 "the Board confined its application to situations clearly falling within the metes

and bounds of the statutory language," but that in 1968, with its decision in San Francisco-Oakland Mailers' Union No. 18, 172 NLRB 2173, the Board began "significantly expand[ing] the reach" of this provision (94 S. Ct. at 2742).

In San Francisco-Oakland Mailers certain union-member foremen were expelled from the union for allegedly assigning bargaining unit work in violation of the bargaining agreement. The Board--despite the absence of any attempt by the union to obtain the replacement of the foremen--found a violation of Section 8(b)(1)(B), reasoning that "the natural and foreseeable effect of such discipline was that in interpreting the agreement in the future, the supervisor would be reluctant to take a position adverse to that of the union" (94 S. Ct. at 2743).

In subsequent cases, the Court pointed out, "the Board held that the same coercive effect was likely to arise from the disciplining of a supervisor whenever he was engaged in management or supervisory activities, even though his collective bargaining or grievance-adjustment duties were not involved. Through the course of these decisions, §8(b)(1)(B) thus began to evolve in the view of the Board and the courts 'as a general prohibition of a union's disciplining supervisor-members for their conduct in the course of representing the interests of their employers' . . . or for acts 'performed in the course of [their] management duties.'" 94 S. Ct. at 2743(citations omitted).

After reviewing the legislative history of Section 8(b)(1)(B), and noting that in enacting this provision "Congress was exclusively concerned with

union attempts to dictate to employers who would represent them in collective bargaining and grievance adjustment" (94 S. Ct. at 2744), the Court flatly rejected the construction given this provision by the Board. It concluded that a union's disciplining of one of its members who is a supervisory employee can constitute a violation of Section 8(b)(1)(B) "only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer" (id. at 2744-45). 2/

In the present case there is no evidence beyond the fact that the employee in question was a "supervisor," and nothing to indicate that he was either a grievance adjuster (the function alleged by the General Counsel) or a collective bargainer (which the General Counsel did not allege). It is clear, therefore, that the evidence simply cannot establish a violation of Section 8(b)(1)(B), as that provision has now been authoritatively construed by the Supreme Court.

Despite arguments made in the Board's brief (pp. 6-7), there is nothing in the record from which the essential finding may reasonably be inferred. The provision in the collective bargaining agreement upon which the Board's brief relies in this regard indicates only that the orchestra conductor (Jones) will submit to the employer's general manager his requests and observations

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2/ Insofar as the San Francisco-Oakland Mailers decision is concerned, the Court "assume[d] without deciding" that it "fell within the outer limits" of the test it laid down in Florida Power & Light (94 S. Ct. at 2745)--thus indicating, at most, approval of the Board's view that Section 8(b)(1)(B) could be violated not only by union efforts to force the selection or removal of an employer representative (which is all that the Act's literal terms cover), but also by union disciplinary actions which have a "coercive effect" on such representative's collective bargaining or grievance adjusting functions.

concerning Orchestra personnel changes; members of the Orchestra, however, are discharged only by the General Manager (A. 31.). This provision in no way indicates that the conductor acts as an adjuster of grievances.

The cases cited in the Board's brief (p. 7) do not support its position on this issue; indeed, they serve to confirm the error of its position. Thus, in Teamsters Local 524, 212 NLRB No. 133, 87 LRRM 108 (1974)--where the Board found a Section 8(b)(1)(B) violation--it had been expressly stipulated that the supervisors in question were employer representatives within the meaning of Section 8(b)(1)(B). And in Newspaper Guild, Erie News. Guild, Local 187 v. N. L. R. B., supra, the Court, even before the Supreme Court's Florida Power & Light decision, rejected the Board's argument that a supervisor "automatically become[s] a §8(b)(1)(B) representative," holding that "[e]ach case requires an evidentiary basis from which §8(b)(1)(B) status may be inferred" (489 F. 2d at 422, emphasis is the Court's).

Since it is the Board's General Counsel who has the burden of establishing the elements of an unfair labor practice violation, we submit that the lack of proof on this essential point in the present case precludes enforcement of the Board's order. N. L. R. B. v. River Togs, Inc., 382 F. 2d 198, 203-04 (2d Cir. 1967); N. L. R. B. v. Cone Mills Corporation, 373 F. 2d 595, 601 (4th Cir. 1967); International Ladies' Garment Workers Union v. N. L. R. B., 463 F. 2d 907, 921 (D. C. Cir. 1972); McDonnell Douglas Corporation v. N. L. R. B., 472 F. 2d 539, 546 (8th Cir. 1973).

II.

HAVING PREVIOUSLY DISMISSED A CHARGE INVOLVING THE UNION'S DISCIPLINARY ACTION AGAINST JONES ON THE GROUND THAT THE EMPLOYER WAS OUTSIDE THE BOARD'S THEN-CURRENT JURISDICTIONAL STANDARDS, THE BOARD SHOULD HAVE DISMISSED THE NEW CHARGE BASED ON THE SAME EVENTS

As discussed in our Statement (pp. 3-4), Jones' first charge, based on the union's disciplinary action against him, was dismissed because both the Board and the General Counsel concluded that the matter was outside the Board's then existing jurisdictional standards. Jones refiled his charge after the Board announced that it would consider exercising jurisdiction over symphony orchestras, and the Regional Director's complaint was issued some eight months later--after the Board had adopted standards that covered this symphony orchestra.

In support of this procedure, the Board contends (Brief, pp. 12-13) that revised jurisdictional standards may be, and normally are, applied to conduct which occurs before their issuance if such conduct is the subject of a charge which is pending when the new standards are adopted. What the Board ignores, however, is that it has been its own repeatedly-stated policy that once an unfair labor practice charge has been dismissed on jurisdictional grounds, the charge will not be reactivated on the basis of revised jurisdictional standards. Yellow Cab Co. of California, 93 NLRB 766 (1951); Siemons Mailing Service, 122 NLRB 81 (1958); Wausau Bldg. & Construction Trades Council, 123 NLRB 1484 (1959).

This policy has been applied both to cases in which the dismissal was ordered by the Board itself (Siemons, Yellow Cab, supra), as well as to charges disposed of by the General Counsel (Wausau, supra). As stated by the Board in Wausau:

> "Without deciding the extent of the General Counsel's authority to reconsider his dismissal of an unfair labor practice charge, we hold that it is not sound public policy to permit reactivation of dismissed charges because of subsequent change in the Board's jurisdictional standards. If the General Counsel were permitted to reactivate the charges in this case, there is no logical reason why he sould not be allowed to reactivate any and all other charges properly dismissed under then-existing jurisdictional standards. Such reactivation would not only swamp the Board with old cases, but would be a serious injustice to respondents who, in reliance upon the dismissals, have destroyed or failed to preserve evidence bearing upon the alleged unfair labor practices. In adopting the current jurisdictional standards, the Board said that it would not reconsider cases disposed of under the old standards. Although the case in which this policy was announced involved a previous determination by the Board, we believe that the underlying principle is equally applicable to final disposition, as here, of charges by the General Counsel under existing law." 123 NLRB 1485-86.

While in the present case the Board's complaint was based, not upon the "reactivation" of the first charge, but upon a newly filed charge--a distinction which seemed persuasive to the Administrative Law Judge (A. 13)--this certainly is not a distinction which would render inapplicable the above-stated policy of the Board. What was chiefly "new" about the second charge was the number assigned to it by the Regional Director; it was based, as was the original, upon the Union's effort to impose sanctions on Jones for the reasons asserted in the Union's February 24, 1972 letter (see Statement, supra, p. 2). Although the second charge made reference to the Union's

action of August 21, 1972 (the date of the Union trial)--an event which had not yet occurred at the time the first charge was filed--such action was nothing more than a further procedural step clearly contemplated by the February 24 letter, and was obviously regarded as part of the "same conduct" by the Administrative Law Judge (A. 13) as well as the Regional Director's complaint.

Moreover, the Union, which had not held any further proceedings concerning Jones while his charge was pending with the Board, proceeded in reliance on the Board's dismissal of that charge when it scheduled the August 21 trial. To now treat the action it took in such natural reliance on the Board's determination as providing the basis for a "new" charge which is unencumbered by the Board's policy against the reactivation of dismissed charges, would be anomalous in the extreme, and would result in "a serious injustice to respondents" at least as severe as that condemned by the Board in Wausau.

This Court's decision in N. L. R. B. v. Pease Oil Company, 279 F. 2d 135 (1960)--strongly relied on by the Board (Brief, pp. 11, 13) as establishing that a party may not defend against an unfair labor practice charge on the ground that he was outside the Board's jurisdictional standards at the time the offense was committed--is not in point here. In Pease Oil there had been no prior dismissal by the Board or the General Counsel of a charge based on the same conduct, and thus there was not brought into play the Board's announced policy against reactivating charges previously dismissed on the basis of its jurisdictional standards.

It is also appropriate to note that in Pease Oil this Court obviously considered the conduct in question to be blatantly in violation of the Act, and was clearly concerned that unless it enforced the Board's order other employees would be discharged in violation of the Act as were the two whose discharges gave rise to the Board proceeding. In the present case, on the other hand, the violation of the Act, if any, can be established only on the basis of the dubious theory that Jones was an "adjuster of grievances" (a theory which we believe is not supported by the record), and the Union's action resulted in only a minimal fine against Jones.

Moreover, the Board's complaint was based on only one of several intra-union charges brought against Jones--his recommendation as to the continued employment of five orchestra members. Other charges which were part of the same intra-union proceeding, such as his crossing of a picket line and his attempt to prevent the president of the Union from communicating with orchestra members, were not even mentioned by the General Counsel or the Board--presumably because they were not regarded as providing sufficient basis for establishing a violation of the Act. Were it not for the fact that the Union acted in reliance on the Board's disposition of the first charge filed by Jones with the Board, these other intra-union charges could have provided ample basis for the Union to impose sanctions on Jones without running afoul of the Board's process. Under these circumstances, application of the Board's policy reflected in the Wausau, Siemons, and Yellow Cab cases is particularly appropriate.

III.

IN ANY EVENT, THE COURT SHOULD DENY ENFORCEMENT OF THE PORTION OF THE BOARD'S ORDER REQUIRING PUBLICATION OF A NOTICE IN THE MONTHLY JOURNAL OF THE AMERICAN FEDERATION OF MUSICIANS

For all of the reasons set forth above, we believe the Court should deny the Board's petition for enforcement in its entirety. But even if the Court should disagree with our contentions, and conclude that enforcement is warranted, we submit that the Court should delete from the Board's order that portion of paragraph 2(d) thereof which would require the respondent to:

> "(d) Cause to be published the complete text of the attached notice marked 'Appendix' in a conspicuous place in the official monthly journal of the American Federation of Musicians, The International Musician, ..." (A. 23.)

This provision of the Order was inserted at the request of the Charging Party--i.e., Dr. Jones--who argued that it was needed "in light of the notoriety given the disciplining of Dr. Jones by Respondent and in light of the fact that appearances as a guest conductor in various parts of the country are an integral part of Dr. Jones' occupation as a conductor . . . ." (A. 21.) Although the Administrative Law Judge found "no record evidence of any 'notoriety' given the Union's conduct in this case," she inserted the publication requirement in the Order for the following reason:

> "I can take official notice of the peripatetic nature of a symphony orchestra conductor's career. Because of this, I believe it appropriate that reasonable steps be taken to inform interested persons that Jones is not persona non grata with Respondent. Such 'interested persons' would obviously include members of other locals of the American Federation of Musicians, even though Rochester Musicians Association Local 66 is the only respondent in the present proceeding." (A. 22.)

This argument might conceivably have had some validity if the Union had suspended Dr. Jones from membership, as it originally proposed to do. It is at least arguable that such suspension would have rendered Dr. Jones persona non grata not only within the Rochester local, but to other musicians locals as well. But Dr. Jones was never suspended from membership. The local, in the end, decided merely to impose a fine, which was paid. Thus, Jones' membership remained intact at all times.

Under these circumstances, we submit, no valid remedial purpose whatever would be served by requiring the publication of a notice to members of the American Federation of Musicians outside of the Rochester local. The only effect of such a publication would be to cause unnecessary humiliation and embarrassment not only to the Rochester local, but also to the parent organization, American Federation of Musicians, which is not even a party to this case and had no role whatever in the alleged violation.

The cases relied upon by the Board in its brief to this Court are not at all in point. In N. L. R. B. v. Local 294, International Bro. of Teamsters, 470 F. 2d 57 (2d Cir. 1972) and International Union of Operating Engineers, Local 825, 173 N. L. R. B. 955 (1968), enforced, 420 F. 2d 961 (3rd Cir. 1970), the Board merely required the mailing of a notice to all members of the local union which had committed the violation, on the basis of a finding that many members would probably not see the notice if it was merely posted at the union hall. The Board did not require publication of the notice to all members of the parent international union, as it did here. In Marine Welding & Repair

Works, Inc. v. N.L.R.B., 439 F.2d 395 (8th Cir. 1971), the Board simply required an employer to read a notice to its employees--rather than merely posting it--because it found that many of the employees lacked the ability to read and understand a written notice. All of the other cases cited by the Board [3/] involved employer unfair labor practices which were so aggravated, flagrant, and repetitive that the Board found it necessary to require notices to be mailed to all employees and/or posted in other plants besides the ones in which the specific violations occurred. When this Court, in J.P. Stevens & Co. v. N.L.R.B., 380 F.2d 292 (2d Cir. 1967) sustained a Board order of this kind, it was careful to point out that this was an extraordinary remedy which was warranted only because of the egregious and far-reaching character of the violations in that case:

> "These considerations justify the Board's exercise of its discretion in this unusual case; we do not imply--and indeed do not understand the Board to suggest--that such a mailing order is necessary or even desirable in most cases." Id. at 304.

The present case involved, at most, a very minor and isolated violation arising out of a controversy which involved only the Rochester Musicians Association and Dr. Jones. No one else--and certainly none of the members of other locals of the American Federation of Musicians--was in any way affected. The Board has never imposed any extraordinary notice requirements in a case of this kind. Indeed, it only recently refused to adopt an

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3/ Textile Workers Union of America v. N.L.R.B., 388 F.2d 896 (2d Cir. 1967); J.P. Stevens & Co., Inc. v. N.L.R.B., 461 F.2d 490 (4th Cir. 1972); Texas Gulf Sulphur Co. v. N.L.R.B., 463 F.2d 778 (5th Cir. 1972); Decaturville Sportswear Co. v. N.L.R.B., 406 F.2d 886 (6th Cir. 1969).

Administrative Law Judge's recommendation that an employer be required to post a notice in plants other than the one in which a single isolated violation occurred:

> "The record here indicates that the Company's misconduct was not pervasive and occurred only at the struck Rockford Street Plant. Furthermore, there was no evidence that employees at the Company's other two plants in Tulsa . . . were in any way affected by that misconduct. Accordingly, we shall modify the Administrative Law Judge's Order so as to require the posting of remedial notices only at the Company's Rockford Street plant." Dover Corp., 211 NLRB No. 98, 86 LRRM 1067, 1612 (June 25, 1974).

The imposition of a requirement that the respondent in this case publish a mea culpa notice to all members of the American Federation of Musicians in that organization's journal was an act of pure vindictiveness. It can serve no possible legitimate remedial purpose. Therefore, even if the Court should determine that the Board's Order is otherwise enforceable, it should delete the publication provision from that Order.

CONCLUSION

For the reasons stated, the Board's application for enforcement of its order should be denied. 4/ In the alternative, if the Court holds that the

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4/ If the Court should base its decision on the lack of evidence that Jones had authority to adjust grievances, we submit that the appropriate disposition would be denial of enforcement, rather than a remand (see N. L. R. B. v. River Togs., Inc., supra, 382 F.2d at 204)--particularly since this case has already involved an expenditure of litigation effort far exceeding the practical significance of the issues involved.

Board's order is otherwise enforceable, it should at least deny enforcement of the portion of the order requiring publication of a notice in the parent organization's monthly journal.

Respectfully submitted,

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ROCHESTER MUSICIANS ASSOCIATION, LOCAL 66, AFFILIATED WITH THE AMERICAN FEDERATION OF MUSICIANS,
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the BRIEF FOR RESPONDENT in the above-entitled case, on the following counsel of record, this 2nd day of January, 1975.

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Subscribed and Sworn to before me this